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UNITED STATES DEPARTMENT OF TRANSPORTATION
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In the Matter of

JOAQUIN RODRIGUEZ

CP05S00049

DMS: FAA 2005-22885-15

United States Federal District Court
Central Islip, New York

Tuesday,
October 24, 2006

The above-entitled matter came on for
hearing at 10:00 a.m.

B E F O R E:

HONORABLE ISAAC D. BENKIN
Administrative Judge

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P R O C E E D I N G S

THE COURT: We're here this morning to conduct the administrative hearing in the matter of Joaguin Rodriguez, FAA docket CP 05S00049.

I note for the record that counsel for the FAA is here, but there is no appearances for the Respondent.

Mr. Ellis, have you heard from this gentlemen.

MR. ELLIS: I have not your Honor.

THE COURT: Well, I'll tell you what I am going to do. I am going to wait until a quarter after. If he does not appear by then, you will need to put on your prima facie case on the issue of the amount that should assessed against him and we'll conclude the hearing that way and I will announce my initial decision from right we're I am sitting now.

So, let's stand easy and be in recess until 10:15.

MR. ELLIS: Yes, your Honor.

(Recess Taken)

THE COURT: Back on the record. Mr. Groen,

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1 I understand you want to say something to me. Do you
2 want to say it on the record or off the record?

3 MR. GROEN: May I approach?

4 The court: Sure. Come on up Mr. Ellis. You
5 can't talk to me in private Mr. Groen. Those are the
6 rules. Say what you need to say.

7 MR. GROEN: After several efforts to contact
8 Mr. Rodriguez I have not been successful. His situation,
9 as I previous intimated, is some what difficult. He is
10 no longer living at the residence he is at.

11 I did stop there. I spoke with his life
12 partner, the lady he has cohabitated with for over
13 eight years. I know him as a neighbor and friend.

14 THE COURT: You have to speak up.

15 MR. GROEN: She had produced two certified
16 cards from the Court and said I don't know what to do
17 with them I think I'll throw them out.

18 I said that's not the right thing to do;
19 you need to hold on to them. It seems to be a problem.
20 The last time the certified letters did not get to Mr.
21 Rodriguez and he did not have notice last time to
22 prepare and submit his answer in a timely manner.

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1 THE COURT: We have been through this
2 before with Mr Rodriguez. The chief judge issued an
3 order which told him, in no uncertain terms that he had
4 an obligation to keep our office and Mr. Ellis's office
5 advised of an address to which mail could be sent.

6 MR. GROEN: He has done the best he can
7 under the circumstances he finds himself in. And my
8 suggestion he actually got a P O Box that should have
9 been in the paperwork submitted to the Court. I think
10 Mr. Ellis may have gotten a copy of that. So he had
11 complete control over that source of mail.

12 I don't believe he received any
13 correspondence to that post office box. They continue
14 to go to the residence where I believe his life partner
15 continues to depose of them because they are in an
16 adversarial situation.

17 The only person that has a contact number
18 for Mr. Rodriguez would be that lady and that would be
19 Mrs. Rodriguez's mother in Miami and I think the only
20 place he can be now.

21 I have several calls into her to produce
22 that telephone number so I can communicate with him and

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1 apprise him of the fact he needed been here today. She
2 has not been forthcoming with that information because I
3 mentioned he is a neighbor of mine. I am willing --

4 THE COURT: If he is a neighbor of yours
5 you could have gone over and knocked on his door.

6 MR. GROEN: I have done that actually. There
7 are circumstances that are difficult. She works two jobs
8 and is home five, six hours a day and home during the
9 night. I have written her and left notes on the door and
10 have not gotten response.

11 I don't think she wants to do anything to
12 help Mr. Rodriguez because the situation is adversarial.
13 I'll press upon her the importance of producing
14 information so he could be here. What I would like to do
15 is get a short term adjournment. I'll do everything
16 shorts of a Herculean effort to get in touch with him so
17 he could be here on behalf of this and I'll do
18 everything I can. I think that is only appropriate and
19 proper.

20 THE COURT: Mr. Ellis?

21 MR. ELLIS: Obviously as you mentioned your
22 Honor we have been through this before with Mr.

1 Rodriguez. It's an on going issue. The issue of his
2 place of address service issues has been an established.
3 The U. S. Government has to spend a great deal of money
4 to defend these cases. Mr. Rodriguez has been given
5 opportunity to appear. We believe under the
6 circumstances he has waived that opportunity and that we
7 should proceed, today.

8 THE COURT: Let me look at the
9 correspondence from him. 525 Boxwood Drive, North
10 Shirley, New York is that where this lady you have been
11 talking about lives?

12 2 MR. GROEN: Correct.

13 THE COURT: In June, he sent some mail to
14 the chief judge from -- actually sent a Federal Express
15 package to the chief judge and that's the return address
16 it had on it. Let me see if --

17 MR. GROEN: In that correspondence, if I
18 may, would be the information identifying the fact that
19 he was going to secure a P O box specifically for this
20 purpose.

21 THE COURT: You may have another
22 communication from him or it may have come in the same

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1 envelope, and its says in accordance with the order of
2 Chief Administrative Law Judge Rhonny A. Yoder (ph)
3 served May 16, respondent provides the following
4 information: One, respondent has secured a post office
5 box for any and all correspondence to this matter. The
6 post office box is 772 Yaphank, New York. 11980, or 525
7 Box Wood Drive, Shirley, New York. 11967. Then it gives
8 a phone number which he can be contacted 631-775-0836.

9 MR. GROEN: That's the number I have been
10 living messages at. The 0836 is the number and 525
11 Boxwood Drive; also where his former life partner lives
12 and where the information has been, I am sure, routinely
13 deposed of and he has not had notice. That has been a
14 problem.

15 If I may, my suggestion to Mr. Rodriguez
16 since he going through a difficult time, not only
17 financially, having been unemployed for the past two
18 years but I believe he's in a severe depressed state of
19 mind. My suggestion to him is was that he get some
20 counseling. I believe that is the core of the problem
21 and the reason we have been together here today is a
22 manifestation of that problem.

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1 As far as suggesting that I would refer him
2 to three people for psychological evaluation to help
3 him, he seemed to be receptive to that, unfortunately,
4 since that time I have not been able to communicate with
5 him.

6 He is experiencing what I think three and a
7 half out of five persons do throughout their life time
8 is some type depression from mild to severe and that, of
9 course, is making things much more difficult for him to
10 get up for the circumstances today. But in no way am I
11 suggesting that he is intentionally avoiding the Court
12 or his responsibility. He has been clear about that with
13 me in my prior conversations.

14 THE COURT: Here's the problem. Mr. Ellis
15 is quite right. It costs a lot of money to conduct these
16 hearings. And both he and I have to travel on the tax
17 payers nickel; in addition the witnesses have to be
18 brought here. On the other hand, I would like this
19 fellow to have a chance to be heard.

20 So, what I am going to do, very
21 regretfully, is let Mr. Ellis put in his case now, and
22 then adjourn this case to another day; give him full and

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1 fair notice of it sent to the post office box. You do
2 your best to tell him what the date is, and we'll see if
3 he shows up.

4 Do you have any idea where he might be
5 geographically?

6 MR. GROEN: Yes, it is only an idea your
7 Honor --

8 THE COURT: Is he on the Island?

9 MR. GROEN: Although I am not certain I do
10 know his mother resides in Miami, Florida. Because he is
11 without any funds at all, and regretfully, I have to say
12 he has been cutting lawns in the neighborhood to make
13 what money he can, that's the situation he has found
14 himself in financially. My best guess is that if he has
15 gone somewhere where he has some sort of shelter it
16 would be Miami with his mother.

17 THE COURT: I can't schedule a hearing in
18 Miami on that basis.

19 MR. GROEN: I understand. The number I am
20 pressing my life partner for I know she has, if not on
21 telephone records, certainly in her phone book is his
22 mother's number so I can communicate with him.

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1 That's my best educated guess as to where I
2 am going to be able to find Mr. Rodriguez. Short of her
3 being difficult because of their personal issues and
4 problems, I would like to think that she would produce a
5 number that I could at least communicate with him.

6 THE COURT: Well, I am going to set the
7 resumed hearing for the middle of December. And I am
8 going to set it for here. That's the best I can do.

9 Mr. Ellis, I know that makes you unhappy
10 because you are going to have to come back here.

11 But, in this case, I would like to give the
12 man his hearing. And the fact is that he did give us his
13 post office box and we did not send the notice to the
14 post office box. Now if he's in, Miami, I don't know
15 whether selling mail to the post office box in Yaphank,
16 New York is going to help. But we will do that.

17 MR. ELLIS: Actually your Honor, I remember
18 receiving the letter where he gave us his P O Box. I am
19 not sure that I didn't send everything I issued to that
20 post office. I believe I would have, if that's what he
21 said in his response.

22 THE COURT: Well, Mr. Ellis, if you did, I

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1 appreciate it. Your office staff is more responsive
2 then mine is; but the key document is the notice of the
3 hearing. And I am rather sure that was not sent there.
4 So we're going to go around again.

5 MR. ELLIS: One issue I might bring up to
6 the Court, I merely mention this because service has
7 become an issue. That is the issue of whether Mr.
8 Rodriguez is a United States citizen or not. Because if
9 an individual cannot be located and an order is issued
10 by the Court eventually it has to go to collection and
11 it will never be collected if the individual is not a US
12 citizen.

13 I don't know if his attorney can talk about
14 that or not?

15 MR. GROEN: Certainly not. I can testify to
16 the best of my knowledge he is US citizen. I have no
17 reason to believe he is not. I know he has been
18 previously employed at the veterans hospital for years.

19 THE COURT: He couldn't be if he were an
20 illegal alien.

21 MR. GROEN: It is in Northport. Based on
22 that I am reasonably sure and comfortable stating he is

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1 US citizen.

2 THE COURT: Here we are again. The problem
3 the man has is that if he does not have the wherewithal
4 to pay the assessments that arises out of this case,
5 that is, in itself, a potential mitigating circumstance.

6 But I can decide this and the administrator
7 can decide that based only on a record. And we have no
8 record.

9 In the notice of the hearing, he was told
10 to produce all the documentary evidence that he wanted
11 to submit and send a copy to me and a copy to Mr. Ellis,
12 and tell us what witnesses he wanted to put on. He
13 didn't respond to that.

14 As I say, I am going to issue one more
15 notice and I am going to ask him in that notice, to let
16 us know whether he is going to appear. If he does not
17 respond to that, I am going to close the record and
18 assess whatever civil penalty is appropriate based on
19 the material Mr. Ellis is going to put before me today.

20 MR. ELLIS: So, my continued attempt at
21 communicating with Mr. Rodriguez has to be prior to the
22 response stated in the paperwork forthcoming.

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1 THE COURT: That's right. And the date of
2 the hearing will probably be in the middle of December
3 or around December 15th, as I look at my calendar. And
4 he's going to have to respond by November 15th.

5 MR. GROEN: So, it would be approximately
6 30 days or so from the date of the notice that Mr.
7 Rodriguez receives that he has to respond.

8 THE COURT: It would be less than 30 days,
9 two weeks.

10 MR. ELLIS: We also filed discovery
11 independently of the court to Mr. Rodriguez as to which
12 he didn't respond.

13 THE COURT: I assumed you did. Let's see
14 what happens, Mr. Ellis. As I say, the right to a
15 hearing is one of my responsibilities, and I want to
16 give the man that right in actuality, and not because,
17 and not deny it to him, because mail was sent to the
18 wrong address.

19 MR. GROEN: May I make a request that this
20 notice is sent, if its sent in addition to the P O box
21 that it is also sent to 525 Boxwood Drive only because
22 that is no more than a hundred or so steps from my door,

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1 and I will continue to communicate with the people who
2 reside there.

3 THE COURT: Would you be good enough before
4 you leave today to give me a copy of your card and write
5 your home address on it.

6 MR. ELLIS: I would prefer to address these
7 materials to his attorney as well. I prefer to address
8 materials in this matter from this date forward to Mr.
9 Groen as well since he is now representing.

10 THE COURT: I would do that.

11 MR. GROEN: I would appreciate that then I
12 will have notice otherwise I might not.

13 THE COURT: I recommend you do that. Okay
14 gentlemen. Mr. Ellis, you may -- yes, sir.

15 MR. GROEN: One other question. The purpose
16 of our hearing today was to assess damage.

17 THE COURT: The amount of the civil
18 forfeiture. The question whether he is liable has
19 already been decided.

20 MR. GROEN: What information would the
21 Court suggest I produce if I can secure from Mr.
22 Rodriguez in addition to his presence here that would

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1 establish what his present financial situation that
2 would assist the Court on damages?

3 THE COURT: Normally what the FAA asks for
4 on that subject is tax returns.

5 In addition, if he has W-2 forms, that
6 would be appropriate. If he has any documentation for
7 his income, that would be appropriate. And his own
8 testimony.

9 MR. GROEN: We may have to rely on his
10 testimony. Over the past two years his income has been
11 negligible. I am not sure whether he made filings as a
12 result of that. We will bring what we can to produce for
13 the Court. Thank you, your Honor. Thank you Mr. Ellis.

14 THE COURT: Mr. Ellis?

15 MR. ELLIS: The FAA calls -- first I think
16 actually I would like to do a short opening.

17 THE COURT: Sure. You want to make an
18 opening statement? First enter your appearance.

19 MR. ELLIS: Actually I don't need the
20 opening.

21 THE COURT: We all know who you are but --

22 MR. ELLIS: Gerald Ellis, I represent the

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1 FAA and my office is P O Box 206360, Atlanta, Georgia.
2 If you need further information I can provide it,
3 telephone, fax number --

4 THE COURT: That's fine Mr. Ellis we know
5 where to find you.

6 MR. ELLIS: The FAA calls its first witness
7 Stanley Okon.

8 Whereupon,

9 STANLEY OKON,
10 after having been first duly sworn, was examined and
11 testified as follows:

12 EXAMINATION BY MR. ELLIS:

13 Q. Please state of your name for the record.

14 A. Stanley Okon.

15 Q. For the record I am going to ask you some
16 background questions.

17 Could you please tell the Court a little
18 bit about your education and military back ground?

19 A. I am a college graduate, bachelor of
20 science degree; major in chemistry, minor in
21 mathematics. Navy commander, navy pilot, flying P-3's.

22 THE COURT: Mr. Okon, you need to tell us

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1 what you are doing now.

2 MR. ELLIS: I will get to that.

3 Q. How long have you been with FAA?

4 A. I have been in flight standards for
5 25 years.

6 Q. What jobs have you held with the FAA?

7 A. During that time I have been geographic
8 inspector, operations 122 (ph) air carrier. I have been
9 principal inspector on 521 (ph)airlines.

10 Q. Tell what airlines that is?

11 A. That is major air carriers like American
12 Airlines, United Delta the major air carriers in the
13 United States.

14 Q. What your current title?

15 A. I am sorry?

16 Q. What is your current title?

17 A. Geographic inspector right now. Based in
18 Orlando Florida.

19 Q. How did you become involved with this
20 incident?

21 A. I was notified of the incident through the
22 normal channels within the FAA we have a system where

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1 all instances are reported and on a daily basis forward
2 to the geographic areas where these instances have
3 occurred. And I was notified of this instance because
4 the aircraft landed in Orlando.

5 Q. For the record, I am showing the Court what
6 has been marked as Government's Exhibits One, Two and
7 Three together.

8 (Government Exhibits Nos. 1-4 were so
9 marked for identification.)

10 THE COURT: You need to give the reporter a
11 copy. Are you identifying one, two and three?

12 MR. ELLIS: Yes.

13 Q. Do you recognize these documents?

14 Do you recognize these documents?

15 MR. ELLIS: Actually Exhibits One, Two,
16 Three and Four, your Honor.

17 A. Yes, I do.

18 Q. Can you tell the Court what Government
19 Exhibits One through Three are?

20 A. They are signed statements along with the
21 Notice of Investigation of the individual of this
22 incident. These were forwarded to me through the

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1 principal inspector for Southwest Airlines on request
2 from the airlines to provide all witness statements et
3 cetera that had knowledge of this event.

4 Q. I would like to offer Government's Exhibits
5 One through Three and Government Exhibit Four into
6 evidence.

7 THE COURT: Let's first identify them.

8 Government Exhibit One is an in flight
9 irregularity report, signed by Chris Watson.

10 Government Exhibit Two, is an in flight
11 irregularity report signed by Daniel Schnebelen. And
12 I'll say for the record although the record refers to a
13 police statement attached to it, the police statement is
14 not, in fact, attached to Government Exhibit Two.

15 Government Exhibit Three, is an in flight
16 irregularity record, signed by Amy Leputa.

17 And then finally, Government Exhibit Four,
18 for identification is a letter dated May 24, 2005 signed
19 by Inspector, Stan Okon, addressed to Mr. Joaquin
20 Rodriguez in North Shirley, New York. Those documents
21 will be received in evidence.

22 (Government Exhibits Nos. 1-4 were so.

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1 Marked and received in evidence.)

2 Q. A couple of brief questions about those
3 documents.

4 I believe you touched on it before. Can
5 you please tell the Court again the source of these
6 documents?

7 A. These documents are forwarded to me through
8 the principal office inspector who is assigned
9 surveillance over Southwest Airlines. The principal
10 inspector for Southwest Airlines. He notifies the
11 carrier of the requirement to have these documents
12 concerning this incident forwarded to me. That's how I
13 received it.

14 MR. ELLIS: Do you have a question, your
15 Honor?

16 THE COURT: No.

17 MR. ELLIS: You looked inquisitive.

18 THE COURT: I am sorry. I am just
19 focusing, that's all.

20 Q. I have one question about Exhibit Four.
21 Your letter to Mr. Rodriguez?

22 A. Yes.

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1 Q. Do you recall Mr. Rodriguez responding to
2 that letter?

3 A. That is negative. I did not get response
4 from him.

5 THE COURT: You said you did not get
6 response.

7 THE WITNESS: Did not.

8 Q. Are you aware that the FAA proposes
9 penalties of 7300 dollars in this case?

10 A. I am aware of that.

11 Q. Under the facts and circumstances of this
12 case to your knowledge do you support that penalty?

13 A. Based on what took place on that aircraft
14 it is fully justified.

15 MR. ELLIS: All right. That is basically our
16 case and the evidence we would rely on. I could
17 elaborate on some of the information in the reports only
18 in closing, however.

19 THE COURT: You don't need to elaborate for
20 my purposes. How did you calculate \$7,300?

21 THE WITNESS: The guidance for this is in
22 FAA order 2130.3 which gives guidance how the fines are

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1 to be assessed. That order was initially issued in 1988.

2 Since then, the order has been amended to
3 warrant fines up to \$25,000 which I have assessed. And
4 based on what took place on the aircraft I felt it
5 didn't warrant the maximum penalty to be imposed. And I
6 felt that the penalty that was imposed was justified
7 under the circumstances.

8 If the pilot had deviated the aircraft to
9 have Mr. Rodriguez removed, the cost of that deviation
10 would have been borne by Mr. Rodriguez and it would have
11 been in the tens of thousands of dollars. So I feel this
12 is justified under the circumstances. It could have been
13 a lot more if it had gotten any worst then it did.

14 THE COURT: How long did the incident last?

15 THE WITNESS: Evidently it occurred, the
16 disruption started almost immediately once Mr. Rodriguez
17 boarded the aircraft here in Islip. And it continued
18 throughout pretty much the flight until he was removed
19 and put in the back of the airplane until it landed in
20 Orlando, the duration.

21 THE COURT: We have one of the attendants
22 saying that after he threatened her, or him, I forgot

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1 which one it was, and threw the bag at her, he came back
2 to the galley and apologized profusely.

3 This must have been some time after which
4 he sobered up and figured out that he was in trouble.

5 Do you give him any credit for that?

6 THE WITNESS: Well, part of that could be
7 in the issue I chose not to go to maximum penalty. Most
8 of the time our understanding is when we do maximum
9 penalty when they come to the hearing based on
10 mitigating circumstances we then can reduce that fine.
11 In this case I reduced it myself because I thought he
12 did show some contrition but that does not negate the
13 difficulties and the possible safety issues involved
14 with him being as disruptive as he was on that airliner.

15 THE COURT: One last question, is it a fair
16 statement to say that you have, as we sit here today, no
17 knowledge, whatsoever, of respondent's financial
18 circumstances and his ability to pay a \$7,300 penalty?

19 THE WITNESS: That is true.

20 THE COURT: Thank you.

21 MR. ELLIS: That is all I have for this
22 witness.

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1 THE COURT: Do you want to examine?

2 MR. GROEN: I would like to be on the
3 record. I would like to go on the record for a moment
4 if I may. I would like to acknowledge the exhibits
5 submitted by Mr. Ellis to the Court. If I might ask the
6 witness just one or two questions.

7 One is a factual one hoping that the
8 witness might be able to itemize the incidents with the
9 actual fines that total 7200 (sic) dollars. That would
10 give me insight in the actual events and circumstances
11 that are alleged in the action.

12 MR. ELLIS: Objection that is a deliberative
13 process, your Honor.

14 THE COURT: Well, I can't rule on your
15 objection until the question is asked.

16 MR. ELLIS: I am sorry, I thought it was
17 finished.

18 THE COURT: I didn't hear the question. You
19 said you were going to question him on the subject of --

20 MR. GROEN: I would like to know if the
21 witness could identify the dollar amount individually
22 that totaled \$7,200 (sic) in the total amount with the

1 total incident or incidents that produced that sort of
2 fine or number so I can assess what the facts and
3 circumstances were in these incidents.

4 I have a report here which I appreciate but
5 the additional information I have not had, otherwise I
6 have nothing that helps me or gives insight as to
7 incident, the gravity of the seriousness of it and the
8 dollar amount associated with that.

9 If I may, I would if I were to go to the
10 store and buy something I would know the total amount
11 but I would certainly like to know what itemized costs
12 are for items or things that totaled the entire amount.
13 That would be extremely helpful if we could have that on
14 the record. Second --

15 THE COURT: Well, do you want him to take
16 you through the FAA regulation, excuse me, not
17 regulation, the FAA policy statement that specifies how
18 penalty assessments are to be calculated?

19 MR. GROEN: Whatever version --

20 THE COURT: I am sure he can do that.

21 MR. GROEN: Whatever version he is
22 comfortable with. Short of that I don't know how it is

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1 other than pulling a number out of the air which I am
2 sure the witness did not do in assessing Mr. Rodriguez
3 with that fine.

4 MR. ELLIS: Objection. That is a
5 deliberative process. The inspector is not the one who
6 has to make that calculation.

7 THE COURT: I'll overrule that objection.
8 This goes on at every hearing. And he's fair game to be
9 asked how using regulation 2150.3 he came up with the
10 number.

11 MR. ELLIS: My objection is also based on
12 the fact its not only a regulation at work when it comes
13 to the calculation of penalties but the statute itself
14 which is not a part of the sanction guidance.

15 THE COURT: Well, if he didn't use 2150.3
16 then it's up to him to tell me that.

17 MR. ELLIS: The issue is not whether he used
18 it, its whether the administrator used it. It is not the
19 inspector himself that makes the decision.

20 THE COURT: No, sir, I am the administrator
21 here. I have to decide, that's right.

22 MR. ELLIS: That is not what I mean.

1 THE COURT: The administrator is not the
2 enforcement staff. If you don't believe that Mr. Ellis,
3 I can find the provision of the Administrative Procedure
4 Act that says that.

5 MR. ELLIS: I am not trying to argue that we
6 have final authority on what the sanction should be.
7 What I am saying is when there is suggestion of civil
8 penalties in civil penalty matters it is a step above
9 the inspector where decision is made on that. We can
10 propose, of course, but your Honor, has complete
11 authority to agree or disagree with that.

12 THE COURT: Quite correct, Mr. Ellis. But I
13 understood him to say that 7300 dollars -- is that the
14 right number?

15 THE WITNESS: 7300.

16 THE COURT: 7300 is the number he
17 recommended too. So he could be, he can ask questions
18 dealing with his recommendation. So we're back to square
19 one Inspector Okan. You need to tell us how you got this
20 number.

21 THE WITNESS: The guidance as provided in
22 compliance enforcement states maximum, minimum, middle

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1 fine and minimum fine to be assessed based on the
2 severity of the events.

3 THE COURT: Which one did you use?

4 THE WITNESS: I am sorry.

5 THE COURT: Which one did you use?

6 THE WITNESS: 2150.3. They authorized for
7 a minimum --

8 THE COURT: Did you consider minimum/
9 maximum?

10 THE WITNESS: Maximum amount of a thousand
11 dollars per event. Under the fines enforcement
12 regulation, the violation against individuals on an
13 aircraft in flight can be assessed based on how many
14 times the individual violated that regulation.

15 It can be as much as, say, if the
16 individual did five events or six events, each could be
17 assessed a fine of \$1,000 per event.

18 Or you can assess a single event of value
19 based on what severity of the event is. The level of
20 fines have been increased substantially, especially
21 since 911 to go all the way to \$25,000. That can be per
22 event.

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1 I feel that is way beyond what took place
2 here; and so, the three event, that were recorded on the
3 aircraft, was sufficient to address each event
4 individually with a fine of \$2,000.

5 THE COURT: Go ahead.

6 EXAMINATION BY MR. GROEN:

7 Q. I appreciate the information you provided
8 sir. When you say the events that occurred were not way
9 beyond what the maximum would be, I am assuming you know
10 specifically what those events are to make that
11 determination? So what I would ask, how many violations
12 were there, sir?

13 A. Three specific ones.

14 Q. May I finish. It is a three part question.
15 You may be able to answer this all at once for brevity
16 sake.

17 How many violations occurred; what were the
18 violations and what was the degree of severity of each
19 of those violations?

20 A. They --

21 MR. ELLIS: Objection, calls for a legal
22 conclusion, your Honor.

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1 MR. GROEN: May I, your Honor, in response
2 to Mr. Ellis's objection this is a financial not legal
3 determination and I believe based on our witnesses
4 presence here and the only witness Mr. Ellis has
5 provided that he would be the one who would be able to
6 unravel this for us.

7 THE COURT: I'll overrule the objection.
8 Mr. Ellis, this is fair cross examination for your man.
9 And, well, all right. Number one is disruption of
10 passengers. What's Number two?

11 THE WITNESS: Again a second events of
12 disrupting the passengers, actually touching the
13 individuals, physically touching that borders on
14 assault.

15 The third event was the actual throwing of
16 the bag at the flight attendant. That is assault. Under
17 the current status, that's mandatory \$25,000 fine, just
18 the assault itself by itself.

19 I felt and I have had cases where in the
20 past, where flight attendants have been injured and I
21 have assessed a \$25,000 fine.

22 I didn't feel the bag issue, although it is

1 technically an assault event, was not sufficient enough
2 to impose the maximum fine for that one event alone. So
3 I felt that the overall fine was commensurate with what
4 took place.

5 THE COURT: Go ahead.

6 Q. Again, I am just a little concerned that I
7 don't have a dollar amount per event. If that
8 information could be provided and, of course, I am
9 having a little bit more information and I can move to
10 my next question.

11 A. Well --

12 MR. ELLIS: Move to strike. It's not a
13 question.

14 THE COURT: That's not really a question.

15 Q. Sir, would you please provide information
16 to myself and the Court as to what event occurred and
17 the violation imposed per event, please.

18 MR. ELLIS: Objection asked and answered.

19 A. I have to review --

20 MR. ELLIS: Objection.

21 MR. GROEN: I didn't get a specific dollar
22 amount.

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1 THE COURT: I'll let him answer that.
2 Inspector, can you break this down and give us a dollar
3 amount per event? How much do you think disruption of
4 the passenger should cost him? How much, you said
5 physical touching?

6 THE WITNESS: Physically touching took
7 place technically is assault.

8 THE COURT: I'll decide that. I have some
9 questions. And finally throwing the bag which you said
10 was the major matter. Could you give us a how much for
11 disruption of passengers?

12 THE WITNESS: Again, we don't assess
13 individual events as this is worth \$1,200, that is worth
14 \$5,000 et cetera, unless an issue like assault takes
15 place.

16 In the case of Mr. Rodriguez, he several
17 times during the flight accosted passengers by
18 physically grabbing them, touching them; this happened,
19 three, or four times, I think, until he was taken away
20 and removed from the vicinity of those passengers.

21 I would say 20, I can't remember \$2,300 a
22 piece for the three events. What is the reaching issue

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1 above that, again, I have no control over, because I
2 don't have authority; I am just not aware of their -- if
3 they will issue higher fines that I assessed but --

4 MR. GROEN: I am sorry, I don't mean to
5 interrupt the Court.

6 THE COURT: Are you done?

7 THE WITNESS: Yes.

8 THE COURT: Ask your next question.

9 Q. I am concerned and confused at the same
10 time. If we're able to determine that 1,000 dollars per
11 event was the maximum amount that was assessed against
12 Mr. Rodriguez there should be some criteria for
13 establishing \$1,000. So, if the case, if it was half as
14 much of a violation, if I could refer to it that way,
15 then it would have been \$3,500?

16 I am wondering what it is that helped you,
17 sir, in identifying that this should be the maximum
18 amount and a thousand dollars was that amount and what
19 it was about the specific action that caused you to
20 conclude that it would be a thousand dollars?

21 A. The potential --

22 MR. ELLIS: Objection, compound question.

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1 THE COURT: Objection overruled.

2 A. The potential assault events that took
3 place, personal assaults, he personally grabbed people,
4 he threw the bag at the flight attendant. That is
5 assault. And that warrants by itself, a \$25,000 fine.

6 If I were to assess that, I would have. I
7 felt that under the circumstances no injuries were
8 incurred, so, I didn't feel the maximum penalty but a
9 penalty has to assessed.

10 Q. I do understand that you could have but you
11 did not assess him on the basis of assault.

12 So, I can't guess at what happened and what
13 your logic was. I can go by what you said it was and
14 wasn't. And the fine was not assessed for assault. So my
15 concern is the difference between touching --

16 MR. ELLIS: Objection. Counsel is developing
17 and again I have to object on the grounds he is asking
18 the witness for legal conclusions. The inspector does
19 not do that, cannot do that. Does not have that
20 authority.

21 MR. GROEN: I am not asking for a legal
22 conclusion I am trying to understand what the touching

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1 was. If you haven't met Mr. Rodriguez you don't know his
2 size, his demeanor, the tenor of his personality, his
3 voice, his intonation. It is very difficult for me to
4 understand how our witness today can determine he used a
5 loud and harassing voice or was forceful as opposed to
6 handing a bag over with enthusiasm or whether or not it
7 was with anger and frustration.

8 THE COURT: You have gone about as far as
9 you can go on cross examination. I understand what he
10 knows and doesn't know. And that's all stuff you can
11 argue about in your closing statements. Or in a brief.

12 But you can't argue with him about it. And
13 you can't, you know, if you want to make a case that he
14 has not sufficiently defined the parameters of his
15 discretion, that's a case you can make, but he's not
16 going to say he did that.

17 Now, you know, Inspector, I'm interested in
18 what you think the physical touching was. As I read
19 these reports, which is all I have got to go on, all you
20 have got to go on, the only statement that deals with
21 that is the statement of the A. Flight attendant Chris
22 Watson. He or she.

1 THE WITNESS: Under the first exhibit.

2 THE COURT: He or she, I don't know if he
3 is a male or female.

4 THE WITNESS: Under the first exhibit
5 there's a statement that he grabbed the mother's arm of
6 some children he was playing with.

7 THE COURT: He grabs mother's hands and
8 commented loudly about her rings. That's it. So, we
9 don't know, whether she was offended by this or whether
10 she invited this, by showing him her rings or anything
11 else about that interaction.

12 THE WITNESS: This is all I can go by.

13 THE COURT: All we know, all we know is that
14 the A. Flight attendant interpreted this interaction as
15 being the reason for reseating this fellow.

16 THE WITNESS: Correct.

17 MR. ELLIS: I didn't hear what you said.

18 THE COURT: All we know is that the A.
19 Flight attendant thought that whatever he did was the
20 reason for reseating. That's the only piece of
21 information we have. Okay. Anything else? You may exam
22 if you want to.

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1 MR. GROEN: The other difficulty I am having
2 is tying events to dollar amounts. I am just a little
3 bit at sea here how it is we establish, after the
4 government's witness testified, a reliable dollar amount
5 that has some sort of integrity. That would be
6 appropriate for the incident that we're having trouble
7 defining.

8 I am at loss as to where to go at this
9 point. If I might have a moment to speak with Mr. Ellis
10 before I conclude I would like to do that your Honor.

11 THE COURT: What about Mr. Ellis? I am
12 sorry?

13 MR. GROEN: Might I have an opportunity to
14 approach the bench and communicate with Mr. Ellis and
15 yourself? I would like to do that before I conclude.

16 THE COURT: Well, come on up. What's your
17 problem?

18 MR. GROEN: Not a problem. Hoping to find
19 some way out of a situation which seems to be difficult
20 and undefinable and to do justice at the same time your
21 Honor. I don't know after Mr. Ellis concluded putting
22 his case on, if he is considering or permitted to

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1 provide any additional information when we meet the next
2 time.

3 THE COURT: Additional information, the
4 time for that is long since passed. The time for
5 discovery is over.

6 MR. GROEN: I would have thought the same.

7 THE COURT: So this is it.

8 MR. GROEN: In this regard, hoping to save
9 time for the Court and all parties concerned if Mr.
10 Ellis and I were to communicate some sort of settlement
11 amount that would accurately reflect the lack of
12 information we may have to arrive at an appropriate
13 number, if he and I could agree on that I am hoping we
14 might be able to conclude the matter today without
15 having to return?

16 THE COURT: As we say in my business
17 settlements are next to godliness. We always like
18 settlements.

19 But you are going to have to deal with Mr.
20 Ellis on that. The FAA does settle cases. And that's all
21 I can tell you.

22 MR. GROEN: Which is why I asked for a

1 moment if I can confer with Mr. Ellis before I conclude.

2 THE COURT: Well, okay.

3 MR. ELLIS: No, your Honor.

4 THE COURT: It's not going to do you any
5 good now. You are going to have to talk to your client
6 before you settle this case. And as you cannot reach
7 your client, the possibility of settlement vanishes and
8 I suspect that in the circumstances of this case Mr.
9 Ellis is going to insist on cash on the barrel here.

10 So, you have got a long road to hoe. You
11 better do it after we close today.

12 MR. GROEN: Okay. My intention,
13 specifically, was to bring Mr. Rodriguez some
14 information that might allow us to expedite the
15 proceedings so I don't have to go to him and back to Mr.
16 Ellis and then back again to Mr. Rodriguez.

17 THE COURT: You have to communicate,
18 however you can communicate with him.

19 MR. GROEN: Will do.

20 THE COURT: And I really have nothing to
21 say on that point except that you need to A, be willing
22 to settle and B, to be willing to pay an amount that is

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1 acceptable to the government, and C, actually to come up
2 with the cash and pay it. So you have a way to go. And
3 after we close this session today, you can work on it.
4 All right.

5 MR. GROEN: May I make one concluding
6 statement?

7 THE COURT: Mr. Ellis do you want to make
8 closing statements now or wait until later.

9 MR. ELLIS: Since you have given Mr.
10 Rodriguez another opportunity to appear before you I
11 would wait until then to make my closing argument.

12 THE COURT: That's fine, Mr. Ellis.

13 Have you, counsel, concluded your
14 examination?

15 MR. GROEN: No, but as, on the record, I
16 feel compelled as Mr. Rodriguez's attorney at this point
17 to make a motion to dismiss the matter in light of the
18 fact that the government has produced insufficient
19 information and evidence to support their claim of \$7200
20 (sic).

21 THE COURT: Your motion is denied because
22 that train has left the station already. I issued an

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1 order holding your client liable. And there is going to
2 be some kind of an assessment against him.

3 If the government's evidence is deemed
4 insufficient, I'll work it out based on whatever other
5 material I have in the record.

6 MR. GROEN: As his legal representative I
7 was compelled to make that motion. Now I am ready to
8 get off the record.

9 THE COURT: Okay.

10 MR. GROEN: Thank you, sir.

11 MR. ELLIS: Is he still on cross?

12 THE COURT: Any redirect?

13 MR. ELLIS: Yes, I do.

14 THE COURT: Please proceed.

15 2 MR. ELLIS: Your Honor, I was going to wait
16 until closing to get into some of the issues and the
17 statements since the issue was raised on cross regarding
18 the touching that went on under the statute. I do want
19 to bring out one part of the record.

20 Exhibit, Government Exhibit Two, if the
21 witness would please take a look at that and let me know
22 when he has found it.

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1 THE COURT: Yes.

2 EXAMINATION BY MR. ELLIS:

3 Q. If you look at page three of that exhibit
4 please read the paragraph about four up from the bottom,
5 the sentence about four pages up?

6 A. "As I was handing out my drinks, he
7 crumbled up an emesis bag and threw it at me. He also
8 threw his peanut and snack wrappers in my direction
9 after pouring their contents on the floor and tray
10 table."

11 Q. Would you consider those actions, when you
12 proposed a civil penalty?

13 A. Yes.

14 MR. ELLIS: That's all, your Honor.

15 THE COURT: Recross?

16 MR. GROEN: Just one question, your Honor.

17 EXAMINATION BY MR. GROEN:

18 Q. Again, just for clarity sake, which of
19 those items that were just presented to you and you had
20 read to us, did you consider and in what way in
21 assessing the fine?

22 MR. ELLIS: Objection. Asked and answered.

1 THE COURT: Overruled. Answer the question.

2 A. This was the event where he threw the bag
3 and contents at the flight attendant.

4 Q. That was a plastic wrapper of a peanut bag?

5 A. No, it was not. It was the in the airline
6 in every pocket, there is a bag that can be used for
7 people, a sick bag. This is what he threw at the flight
8 attendant. I don't know if there was anything in it or
9 not but he did throw that bag.

10 Q. That bag is a paper bag?

11 A. It is an waxed paper bag I think it has a
12 metal tie at the top of it.

13 Q. I was also referring he also threw his
14 peanut and snack wrapper?

15 A. That was the second thing. He also threw a
16 peanut and snack wrapper.

17 Q. One at a time, please. He threw his peanut
18 and snack wrapper?

19 A. That's a plastic cellophane wrapper. I
20 don't know what that is.

21 Q. I don't know either. I am asking you the
22 witness?

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1 A. I don't know what they had.

2 Q. So, you don't know what force it was thrown
3 or what impact it had?

4 A. I don't see that as being material at this
5 point. It was the act itself.

6 Q. So, it was actually an expression of his
7 frustration and not necessarily the contents you were
8 focusing on in establishing the violation?

9 A. That is part of it.

10 Q. Did you have any information provided to
11 you, because I don't see that in the paperwork, of any
12 antecedent events, provocative behavior of the flight
13 attendants prior to this?

14 A. Negative.

15 Q. Were you aware or do you know that the male
16 flight attendant had made sexual passes or --

17 MR. ELLIS: Objection.

18 THE COURT: Your objection is sustained.

19 I am not going to let you go there. You
20 have no basis for that and we are on recross.

21 All you can ask him about is throwing the
22 throw up bag.

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1 MR. GROEN: I simply asked because I see
2 what is here. I am not seeing what is not here and that
3 I had information about. Okay. Thank you.

4 THE COURT: Inspector Okan thank you for
5 coming. You are excused, sir.

6 If there is nothing further we need to say,
7 this hearing will be in recess until December 14th,
8 2006.

9 MR. ELLIS: Same time, your Honor?

10 THE COURT: Same time, same place subject
11 only to modification if we can't get the facility here.

12 I am not any more happy about it then the
13 Government is, but I have got to do what I can to assure
14 that the respondent gets a fair and full opportunity to
15 be heard.

16 MR. GROEN: May I assume at this point Mr.
17 Ellis representing the Government has provided any and
18 all information he has available on this matter?

19 THE COURT: You may not assume that. We
20 have discovery rules. If discovery was not sort in
21 accordance with the discovery rules you are out of luck.

22 It's just like the Federal Rules of Civil

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1 Procedure. If you didn't ask, you don't get.

2 MR. GROEN: Now any additional information
3 may be brought to bear the next time we meet?

4 THE COURT: What we are going to do the next
5 time we meet, let me be very precise about this. We're
6 going to give Mr. Rodriguez the opportunity, under oath,
7 to tell us why he believes that the amount sought by the
8 FAA, 7300 dollars, is too severe a civil penalty. And
9 that is it. That is the limited issue we are hearing.

10 MR. GROEN: Thank you, your Honor.

11 THE COURT: This portion of the hearing is
12 concluded.

13 MR. ELLIS: Thank you, your Honor.

14 (Time Noted: 11:10 a.m.)
15
16
17
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21
22

CERTIFICATE

This is to certify that the foregoing transcript
in the matter of: Joaquin Rodriguez

Before: The Honorable Isaac D. Benkin

Date: October 24, 2006

Place: U.S. Federal District Court
 Central Islip, New York

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
typewriting.


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					POSITION (A) B C

OTHER FLIGHT ATTENDANTS:

NAME: Daniel Schnebelen POSITION: A (B) C BASE: MCO EMPLOYEE #: 55464

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|---|--|--|--|
| <input type="checkbox"/> Alcohol-related* | <input type="checkbox"/> Delay/Cancellation* | <input type="checkbox"/> Fire | <input type="checkbox"/> Rejected Takeoff |
| <input type="checkbox"/> Bodily Fluid | <input type="checkbox"/> Depressurization | <input type="checkbox"/> Illness* | <input type="checkbox"/> Safety-related* |
| <input type="checkbox"/> Cabin Prep (Emergency) | <input type="checkbox"/> Diversion to _____ | <input type="checkbox"/> Injury* | <input checked="" type="checkbox"/> Security* (Threat Level 1) |
| <input type="checkbox"/> Company Policy Violation | <input type="checkbox"/> Emergency Landing | <input type="checkbox"/> MedLink Patch | <input type="checkbox"/> Smoking |
| <input type="checkbox"/> Crew Illness/Injury* | <input type="checkbox"/> Equipment Failure* | <input type="checkbox"/> Misconduct* | <input type="checkbox"/> Turbulence* |
| <input type="checkbox"/> Customer Inconvenience* | <input type="checkbox"/> Evacuation | <input type="checkbox"/> Missed Approach | <input type="checkbox"/> Unauthorized Use of PED* |
| <input type="checkbox"/> Denied Boarding* | <input type="checkbox"/> FAR Violation* | <input type="checkbox"/> Provisioning* | <input type="checkbox"/> Other* |

PLEASE INDICATE THE SPECIFIC NATURE OF ABOVE EVENT IF INDICATED WITH * OR IF NOT LISTED:

Cabin disturbance then threatened physical harm on "B" Flight Attendant.

EQUIPMENT INVOLVED:

- | | | | |
|---|--|---|---|
| <input type="checkbox"/> AED | <input type="checkbox"/> First Aid Kit | <input type="checkbox"/> MedLink Radio Headset | <input type="checkbox"/> Restraints |
| <input type="checkbox"/> Biohazard Clean-Up Kit | <input type="checkbox"/> Flashlight | <input type="checkbox"/> Overwing Exit | <input type="checkbox"/> Stairs |
| <input type="checkbox"/> CPR Mask | <input type="checkbox"/> Gloves | <input type="checkbox"/> PBE | <input type="checkbox"/> Wheelchair (onboard) |
| <input type="checkbox"/> EMK | <input type="checkbox"/> Halon Extinguisher | <input type="checkbox"/> POB FWD MID AFT | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> EEMK (Serial # _____) | <input type="checkbox"/> H ₂ O Extinguisher | <input type="checkbox"/> PPE | |
| <input type="checkbox"/> Escape Slide | <input type="checkbox"/> Megaphone | <input type="checkbox"/> Red Cabin Clean-Up Bag | |

PASSENGER(S) DIRECTLY INVOLVED:

Name: Joaquin Rodriguez
 Address: 505 Baccant Drive
 State/Zip: N. Shirley - NV - 11967
 Phone: NV

Name: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____

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HDQ Inflight

Driver License #: ID 135 767132 D.O.B.: 01-03-57

Driver License #:

D.O.B.:

current witnesses and additional comments on the reverse side.
 550 (Rev. 09/03)

ITEM OF PROOF 1 PAGE 1 OF 2

GOVERNMENT EXHIBIT

Inflight Irregularity Report (Side 2)

MEDICAL ASSISTANCE:

MedLink Contacted? YES/NO

☐ DO ☐ PA ☐ None Needed
☐ EMT ☐ RN ☐ None Available
☐ MD
☐ Other

WITNESSES:

Name: Al Falussy
 Address: 494 Rt III
 City/State/Zip: Smithville, NY 11787
 Phone: 631 241-8738

Name: John O'Shea (Dad in Family)
 Address: 164 S. Centre Ave.
 City/State/Zip: Rockville Centre, NY 11570
 Phone: 516 766-0756

CONTACT INFORMATION FOR ASSISTING QUALIFIED MEDICAL PERSONNEL:

Name: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Certification/License #: _____

Name: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____

Name: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____

ADDITIONAL INFORMATION (USE THIS SECTION TO PROVIDE INFORMATION ONLY ON WHAT YOU SAW, HEARD, DID, OR SAID. IT IS NOT NECESSARY TO REPEAT WHAT YOU HAVE ALREADY INDICATED):

Mr. Rodriguez boarded last and seated himself in the middle of a family. On climb out, Mr Rodriguez became very loud and annoying not only to the family but everyone seated around him. He kept on playing with the children when they did not want to play with him. He grabbed the Mother's hands and commented loudly about her rings. I left the jump seat and quietly asked him to remain quiet and "to himself" so that the PAK ground him could rest. When speaking closely to him I smelled alcohol. He agreed and I returned to the jump seat. He continued to be very loud and annoying. All F/A's discussed the situation and agreed to move Mr. Rodriguez to the rear of the aircraft. The C. F/A asked a couple in the 24th row if they would be willing to move to the front to accommodate our situation. They agreed and Mr Rodriguez reluctantly moved. The Captain was notified of the situation and I remained in the front of the aircraft, monitoring the clear zone, for the remainder of the flight. Law Enforcement met the aircraft upon arrival in MCO. We were taken to MCO Police Station and interviewed by Orlando PD and the FBI.

OUR SUPERVISOR'S NAME:

Sonya Williams

Inflight Base Fax Numbers:

BWI 410.981.1585 MCO 407.825.7653 PHX 602.286.3775
 DAL 214.792.5663 MDW 773.884.3277
 E U 713.845.2251 OAK 510.563.1152

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MAR 21 2005

HDQ Inflight

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TAXED

Total pages 6

(including police statement)

MAR 6 2005



Inflight Irregularity Report

OFFICE USE ONLY:	
RECD IN BASE:	4/12
DNTR DATE:	3/7/05
RECD HQ:	
CC:	

SS

THIS FORM MUST BE SUBMITTED TO AN INFLIGHT BASE WITHIN 24 HOURS OF THE INCIDENT.
CHECK ALL BOXES THAT APPLY.

TODAY'S DATE	EVENT DATE	FLIGHT #	AIRCRAFT TAIL #	DEPARTURE CITY TSP	ARRIVAL CITY
05 Mar 05	04 Mar 05	147	705 SW		MCO
YOUR NAME (PRINT)		YOUR SIGNATURE		EMPLOYEE #	BASE POSITION
Schnebelen, Daniel		Dgach		55464	MCO A @ C

OTHER FLIGHT ATTENDANTS:					
NAME: Watson, Chris		POSITION: @ B C		BASE: MCO	EMPLOYEE #: 61740
NAME: Leputa, Amy R.		POSITION: A B C		BASE: MCO	EMPLOYEE #: 35826

☐ I HAVE NO KNOWLEDGE/DID NOT WITNESS THE EVENT (IF YOU CHECKED THIS BOX, STOP HERE, EXPLAIN ON THE BACK, & SUBMIT)

PHASE OF FLIGHT:	LOCATION OF EVENT:
<input type="checkbox"/> Parked <input type="checkbox"/> Pushback <input type="checkbox"/> Taxi In/Out <input type="checkbox"/> Takeoff <input checked="" type="checkbox"/> Climb <input type="checkbox"/> Cruise <input type="checkbox"/> Descent <input type="checkbox"/> Approach <input type="checkbox"/> Landing <input type="checkbox"/> Other:	<input checked="" type="checkbox"/> Cabin (Seat 23A) <input type="checkbox"/> Galley FWD AFT <input type="checkbox"/> Lavatory FWD AFT <input type="checkbox"/> Jetbridge <input type="checkbox"/> Other:

<input checked="" type="checkbox"/> Alcohol-related* <input type="checkbox"/> Bodily Fluid <input type="checkbox"/> Cabin Prep (Emergency) <input type="checkbox"/> Company Policy Violation <input type="checkbox"/> Crew Illness/Injury* <input type="checkbox"/> Customer Inconvenience* <input type="checkbox"/> Denied Boarding*	<input type="checkbox"/> Delay/Cancellation* <input type="checkbox"/> Depressurization <input type="checkbox"/> Diversion to <input type="checkbox"/> Emergency Landing <input type="checkbox"/> Equipment Failure* <input type="checkbox"/> Evacuation <input checked="" type="checkbox"/> FAR Violation*	<input type="checkbox"/> Fire <input type="checkbox"/> Illness* <input type="checkbox"/> Injury* <input type="checkbox"/> MedLink Patch <input type="checkbox"/> Misconduct* <input type="checkbox"/> Missed Approach <input type="checkbox"/> Provisioning*	<input type="checkbox"/> Rejected Takeoff <input type="checkbox"/> Safety-related* <input checked="" type="checkbox"/> Security* (Threat Level 1) <input type="checkbox"/> Smoking <input type="checkbox"/> Turbulence* <input type="checkbox"/> Unauthorized Use of PED* <input type="checkbox"/> Other*
---	--	--	---

*PLEASE INDICATE THE SPECIFIC NATURE OF ABOVE EVENT IF INDICATED WITH ? OR IF NOT LISTED:

F.A.R. 121.580 - Prohibition on Interference with crew members

EQUIPMENT INVOLVED:			
<input type="checkbox"/> AED <input type="checkbox"/> Biohazard Clean-Up Kit <input type="checkbox"/> CPR Mask <input type="checkbox"/> EMK <input type="checkbox"/> EEMK (Serial #) <input type="checkbox"/> Escape Slide	<input type="checkbox"/> First Aid Kit <input type="checkbox"/> Flashlight <input type="checkbox"/> Gloves <input type="checkbox"/> Halon Extinguisher <input type="checkbox"/> H ₂ O Extinguisher <input type="checkbox"/> Megaphone	<input type="checkbox"/> MedLink Radio Headset <input type="checkbox"/> Overwing Exit <input type="checkbox"/> PBE <input type="checkbox"/> POB FWD AFT <input type="checkbox"/> PPE <input type="checkbox"/> Red Cabin Clean-Up Bag	<input type="checkbox"/> Restraints <input type="checkbox"/> Stairs <input type="checkbox"/> Wheelchair (onboard) <input type="checkbox"/> Other:

PASSENGER(S) DIRECTLY INVOLVED:	
Name: Rodriguez, Joaquin Address: 525 Boxwood Drive City/State/Zip: N. Shirley, NY 11967 Phone: unknown Driver License #: unknown DOB: unknown	Name: _____ Address: _____ City/State/Zip: _____ Phone: _____ Driver License #: _____ DOB: _____

Document is (inserts and additional comments on the reverse side.
IP-550 (Rev. 07/03)

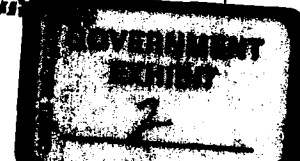
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MAR 21 2005

MCO DOB:

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ITEM OF PROOF 2 PAGE 1 OF 5



MAR 31 2005 16:09 FR CHA CMO

JAN INREGULARITIES-1053

MAR 31 2005 16:09 FR CHA CMO

Inflight Irregularity Report (Side 2)

FAXED

MAR 08 2005

MEDICAL ASSISTANCE: MedLink Contacted? YES/NO <input type="checkbox"/> DO <input type="checkbox"/> PA <input type="checkbox"/> None Needed <input type="checkbox"/> EMT <input type="checkbox"/> RN <input type="checkbox"/> None Available <input type="checkbox"/> MD <input type="checkbox"/> Other		CONTACT INFORMATION FOR ASSISTING QUALIFIED MEDICAL PERSONNEL: Name: _____ Address: _____ City/State/Zip: _____ Phone: _____ Certification/License #: _____	
WITNESSES: Name: <u>Falussy, Al</u> Address: <u>494 Route 111</u> City/State/Zip: <u>Smithville, NY 11787</u> Phone: <u>631-241-8738</u>		Name: _____ Address: _____ City/State/Zip: _____ Phone: _____	
Name: <u>O'Shea, John</u> Address: <u>164 S. Centre Avenue</u> City/State/Zip: <u>Rockville Centre, NY 11570</u> Phone: <u>516-766-0756</u>		Name: _____ Address: _____ City/State/Zip: _____ Phone: _____	

ADDITIONAL INFORMATION (USE THIS SECTION TO PROVIDE INFORMATION ONLY ON WHAT YOU SAW, HEARD, DID, OR SAID. IT IS NOT NECESSARY TO REPEAT WHAT YOU HAVE ALREADY INDICATED):

About 15-20 minutes past our scheduled pushback and while still climbing, I heard the C flt, Amy Leputa, talking to three passengers seated on Row 23 seats A, B, and C. I heard Amy ask them if they would not mind moving and being resealed because we had to move a passenger from up front. Amy then stepped into the back galley to inform me that a passenger was being loud and obnoxious and he appeared intoxicated. The three passengers in 23 A, B, and C agreed to help us out and be resealed. I assisted Amy and our three passengers to the front of the aircraft. Amy then initiated a conversation with Mr. Joaquin Rodriguez, who was seated in seat 4D. She requested that he walk to the back galley with us. Once in the galley we informed Mr. Rodriguez he had to be resealed. He refused to cooperate and wanted to go back to seat 4D.

YOUR SUPERVISOR'S NAME:

Jim Mitchell

RECEIVED

Inflight Base Fax Numbers*:

BWI 410.981.1585 MCO 407.825.7653 PHX 602.286.3775
 DAL 214.792.5663 MDW 773.884.3277
 HOU 713.845.2251 OAK 510.563.1152

MAR 21 2005

HDQ Inflight

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ITEM OF PROOF 2 PAGE 2 OF 5

MAR 31 2005 16:09 FR CWA CMO

MAR 31 2005 16:09 FR CWA CMO

MAR 31 2005 16:09 FR CWA CMO

Inflight Irregularity Report (Side 2)

FAXED

MEDICAL ASSISTANCE: MedLink Contacted? YES/NO <input type="checkbox"/> DO <input type="checkbox"/> PA <input type="checkbox"/> None Needed <input type="checkbox"/> EMT <input type="checkbox"/> RN <input type="checkbox"/> None Available <input type="checkbox"/> MD <input type="checkbox"/> Other _____		CONTACT INFORMATION FOR ASSISTING QUALIFIED MEDICAL PERSONNEL: Name: _____ Address: _____ City/State/Zip: _____ Phone: _____ Certification/License #: _____	
WITNESSES: Name: _____ Address: _____ City/State/Zip: _____ Phone: _____		Name: _____ Address: _____ City/State/Zip: _____ Phone: _____	
Name: _____ Address: _____ City/State/Zip: _____ Phone: _____		Name: _____ Address: _____ City/State/Zip: _____ Phone: _____	

ADDITIONAL INFORMATION (USE THIS SECTION TO PROVIDE INFORMATION ONLY ON WHAT YOU SAW, HEARD, DID, OR SAID. IT IS NOT NECESSARY TO REPEAT WHAT YOU HAVE ALREADY INDICATED):

We informed Mr. Rodriguez that he had no choice and he had to sit alone on Row 23. He then stated that he was going to sue me, Amy and Southwest Airlines for discrimination for reseating him. While having this discussion I noted a smell of alcohol from his breath. His speech was slurred slightly and glassy eyes were noted. Mr. Rodriguez denied any consumption of alcohol. When taking drink orders he requested a rum and coke. I denied him alcohol stating the captain ordered he not have any based on ~~person~~ his behavior. He ordered a coke and expressed his disgust in my refusal to serve alcohol. As I was handing out my drinks, he crumpled up an emesis bag and threw it at me. He also threw his peanut and snack wrapper in Amy and I's direction after pouring their contents on the floor and tray table. While collecting trash

YOUR SUPERVISOR'S NAME:

Continued

Inflight Base Fax Numbers:

BWI 410.981.1585 MCO 407.825.7653 PHX 602.286.3775
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 HOU 713.845.2251 OAK 310.563.1152

RECEIVED

MAR 21 2005

HDO Inflight

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ITEM OF PROOF 2 PAGE 3 OF 5

MAR 31 2005 16:09 FR SWA CMO

JAN INFLIGHT IRREGULARITY REPORT - 1033

MAR 31 2005 16:09 FR SWA CMO

FAXED

Inflight Irregularity Report (Side 2)

MAR 08 2005

MEDICAL ASSISTANCE: MedLink Contacted? YES/NO <input type="checkbox"/> DO <input type="checkbox"/> PA <input type="checkbox"/> None Needed <input type="checkbox"/> EMT <input type="checkbox"/> RN <input type="checkbox"/> None Available <input type="checkbox"/> MD <input type="checkbox"/> Other _____		CONTACT INFORMATION FOR ASSISTING QUALIFIED MEDICAL PERSONNEL: Name: _____ Address: _____ City/State/Zip: _____ Phone: _____ Certification/License #: _____	
WITNESSES: Name: _____ Address: _____ City/State/Zip: _____ Phone: _____		Name: _____ Address: _____ City/State/Zip: _____ Phone: _____	
Name: _____ Address: _____ City/State/Zip: _____ Phone: _____		Name: _____ Address: _____ City/State/Zip: _____ Phone: _____	

ADDITIONAL INFORMATION (USE THIS SECTION TO PROVIDE INFORMATION ONLY ON WHAT YOU SAW, HEARD, DID, OR SAID. IT IS NOT NECESSARY TO REPEAT WHAT YOU HAVE ALREADY INDICATED):

and during seconds he requested that I sit down and speak with him. I leaned over slightly and he pointed in my face and stated "When we get on the ground and off the airplane, I am going to kick your fucking ass." I then informed him that his comment would now require that Orlando Police Department meet us upon arrival and it then walked away and informed my crew of the situation. He then would walk into the back galley and apologized every ten minutes. I experienced no further problems with Mr. Rodriguez during the flight. Upon landing and deplaning he stated "It's all cool dude." Mr. Rodriguez was met by three officers from Orlando Police Department. I was escorted with my crew from the aircraft to the lounge for liquor drop and then by police car from lounge

YOUR SUPERVISOR'S NAME:

Continued

RECEIVED

MAR 21 2005

HDQ Inflight

Inflight Base Fax Numbers:

BWI 410.981.1585 MCO 407.825.7653 PHX 602.286.3775

DAL 214.792.5663 MDW 773.884.3277

OU 713.845.2251 OAK 510.563.1152

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ITEM OF PROOF 2 PAGE 4 OF 5

MAR. 23. 2005 9:33AMM

SWA IRREGULARITIES 5-7653

NO. 32406 T. 011

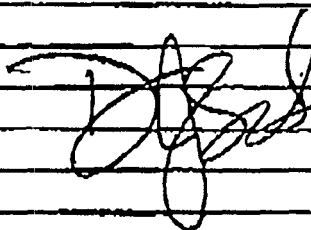
FAXED**Inflight Irregularity Report (Side 2)**

MAR 08 2005

MEDICAL ASSISTANCE: MedLink Contracted? YES/NO <input type="checkbox"/> DO <input type="checkbox"/> PA <input type="checkbox"/> None Needed <input type="checkbox"/> EMT <input type="checkbox"/> RN <input type="checkbox"/> None Available <input type="checkbox"/> MD <input type="checkbox"/> Other		CONTACT INFORMATION FOR ASSISTING QUALIFIED MEDICAL PERSONNEL: Name: _____ Address: _____ City/State/Zip: _____ Phone: _____ Certification/License #: _____	
WITNESSES: Name: _____ Address: _____ City/State/Zip: _____ Phone: _____		Name: _____ Address: _____ City/State/Zip: _____ Phone: _____	
Name: _____ Address: _____ City/State/Zip: _____ Phone: _____		Name: _____ Address: _____ City/State/Zip: _____ Phone: _____	

ADDITIONAL INFORMATION (USE THIS SECTION TO PROVIDE INFORMATION ONLY ON WHAT YOU SAW, HEARD, DID, OR SAID. IT IS NOT NECESSARY TO REPEAT WHAT YOU HAVE ALREADY INDICATED):

to Police Department where I was met by more Orlando Police Officers and an FBI agent. After being questioned and writing a statement (which is attached), my crew and I were escorted by police car to the employee parking lot and released by Andy in crew scheduling at 1740 central time.



YOUR SUPERVISOR'S NAME:

Inflight Base Fax Numbers:

BWI 410.981.1585	MCO 407.825.7653	PHX 602.286.3775
DAL 214.792.5663	MDW 773.884.3277	
FOU 713.845.2251	OAK 510.563.1152	

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MAR 21 2005

HDQ Inflight

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ITEM OF PROOF 2 PAGE 5 OF 5

OFFICE USE ONLY:

RECD INBASE 11/03/05/05
DIST DATE:
RECD HDQ:

FAXED 4601 B

MAR 07 2005



Inflight Irregularity Report.

THIS FORM MUST BE SUBMITTED TO AN INFLIGHT BASE WITHIN 24 HOURS OF THE INCIDENT.

CHECK ALL BOXES THAT APPLY.

TODAY'S DATE 3/4/05	EVENT DATE 3/4/05	FLIGHT # 147	AIRCRAFT TAIL # 705	DEPARTURE CITY ISP	ARRIVAL CITY MCO
YOUR NAME (PRINT) Amy LEPUITE		YOUR SIGNATURE <i>Amy Lepuite</i>		EMPLOYEE # 35826	BASE MCO
				POSITION A B C	(C)

OTHER FLIGHT ATTENDANTS:

NAME: CHRIS WATSON POSITION: (A) B C BASE: MCO EMPLOYEE #: 61740
NAME: DANIEL SCHNEBERLEN POSITION: A B C BASE: MCO EMPLOYEE #: 55464

☐ I HAVE NO KNOWLEDGE/DID NOT WITNESS THE EVENT (IF YOU CHECKED THIS BOX, STOP HERE, EXPLAIN ON THE BACK, & SUBMIT)

PHASE OF FLIGHT:

☐ Parked ☒ Climb ☐ Landing
☐ Pushback ☒ Cruise ☐ Other:
☐ Taxi In/Out ☐ Descent
☒ Takeoff ☐ Approach

LOCATION OF EVENT:

☒ Cabin (Seat 40) ☐ Jetbridge
☒ Galley ☐ FWD ☐ AFT
☐ Lavatory ☐ FWD ☐ AFT

EVENT:

☐ Alcohol-related* ☐ Delay/Cancellation* ☐ Fire ☐ Rejected Takeoff
☐ Bodily Fluid ☐ Depressurization ☐ Illness* ☐ Safety-related*
☐ Cabin Prep (Emergency) ☐ Diversion to ☐ Injury* ☐ Security* (Threat Level 1)
☐ Company Policy Violation ☐ Emergency Landing ☐ MedLink Patch ☐ Smoking
☐ Crew Illness/Injury* ☐ Equipment Failure* ☐ Misconduct* ☐ Turbulence*
☐ Customer Inconvenience* ☐ Evacuation ☐ Missed Approach ☐ Unauthorized Use of PED*
☐ Denied Boarding* ☐ FAR Violation* ☐ Provisioning* ☐ Other*

PLEASE INDICATE THE SPECIFIC NATURE OF ABOVE EVENT IF INDICATED WITH * OR IF NOT LISTED:

DISTURBANCE AND THREATENED B FIA w/ physical harm

EQUIPMENT INVOLVED:

☐ AED ☐ First Aid Kit ☐ MedLink Radio Headset ☐ Restraints
☐ Biohazard Clean-Up Kit ☐ Flashlight ☐ Overwing Exit ☐ Stairs
☐ CPR Mask ☐ Gloves ☐ PBE ☐ Wheelchair (onboard)
☐ EMK ☐ Halon Extinguisher ☐ POB FWD MID AFT ☐ Other:
☐ EEMK (Serial #) ☐ H₂O Extinguisher ☐ PPE
☐ Escape Slide ☐ Megaphone ☐ Red Cabin Clean-Up Bag

PASSENGER(S) DIRECTLY INVOLVED:

Name: JOAQUIN RODRIGUEZ
Address: 525 BOXWOOD DR
State/Zip: N SHIRLEY NY 11967
Phone:

Name:
Address:
City/State/Zip:
Phone:

Driver License #:

D.O.B.:

Driver License #:

Remarks: witnesses and additional comments on the reverse side.
50 (Rev. 09/03)

ITEM OF PROOF

3 PAGE 1 OF 2

GOVERNMENT
EXHIBIT
3

Inflight Irregularity Report (Side 2)

MEDICAL ASSISTANCE:		CONTACT INFORMATION FOR ASSISTING QUALIFIED MEDICAL PERSONNEL:	
MedLink Contracted? YES/NO		Name: _____	
<input type="checkbox"/> DO	<input type="checkbox"/> PA <input type="checkbox"/> None Needed	Address: _____	
<input type="checkbox"/> EMT	<input type="checkbox"/> RN <input type="checkbox"/> None Available	City/State/Zip: _____	
<input type="checkbox"/> MD		Phone: _____	
<input type="checkbox"/> Other _____		Certification/License #: _____	
WITNESSES:			
Name: <u>AL FALLUSY</u>		Name: _____	
Address: <u>404 RT U1</u>		Address: _____	
City/State/Zip: <u>SMITHTOWN NY 11787</u>		City/State/Zip: _____	
Phone: <u>631 241 8738</u>		Phone: _____	
Name: <u>JOHN O'SHEA</u>		Name: _____	
Address: <u>164 S. CENTRE AVE</u>		Address: _____	
City/State/Zip: <u>ROCKVILLE CENTRE NY 11510</u>		City/State/Zip: _____	
Phone: <u>516 766 0756</u>		Phone: _____	

ADDITIONAL INFORMATION (USE THIS SECTION TO PROVIDE INFORMATION ONLY ON WHAT YOU SAW, HEARD, O'D, OR SAID. IT IS NOT NECESSARY TO REPEAT WHAT YOU HAVE ALREADY INDICATED):

YOUR SUPERVISOR'S NAME: _____

Inflight Base Fax Numbers*:

BWI 410.981.1585 MCO 407.825.7653 PHX 602.286.3775
DAL 214.792.5663 MDW 773.884.3277
JFK 713.845.2251 OAK 510.563.1152

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HDQ Inflight

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ITEM OF PROOF 3 PAGE 2 OF 2 ** TOTAL PAGE.11 **



U.S. Department
of Transportation
**Federal Aviation
Administration**

MAY 24 2005

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

File Number: 2005SO290003

Mr. Joaquin Rodriguez
525 Boxwood Drive
N. Shirley, NY 11967

Dear Mr. Rodriguez:

This letter is to inform you that this office is investigating an incident that occurred on Southwest Airlines Flight 147, on March 4, 2005, on a flight from Islip, NY to Orlando International Airport, in Orlando, Florida.

During the aforementioned flight, you were observed to be unruly and disruptive throughout the flight.

This letter is to inform you that this incident is under investigation by the Federal Aviation Administration. We would appreciate receiving any evidence you wish to contribute regarding this matter within 10 days of receipt of this letter. Any discussion or written statements furnished by you will be given consideration in our investigation. If we do not hear from you within the specified time, our report will be processed without the benefit of your statement.

Sincerely,

**ORIGINAL
SIGNED BY**

Stan Okon
Aviation Safety Inspector

Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.

For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".

If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.

PS Form 3800, January 2001 (Reverse)

102595-01-M-1047

PS Form 3800, January 2001

See Reverse for Instructions

OFFICIAL FILE COPY

ITEM OF PROOF 4 PAGE 1 OF 1

Florida Flight Standards District Office
Orlando Location, FSDO-29
Citadel International, Suite 500
5950 Hazeltine National Drive
Orlando, Florida 32822
(407) 812-7700, Fax (407) 812-7710

ROUTING SYMBOL
INITIALS/SIGNATURE
DATE 5/24/05
ROUTING SYMBOL
INITIALS/SIGNATURE
DATE 5/24/2005
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